IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 348 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KISHAN @ TINO SANMUKHBHAI CHINIVALA
Versus
DEPUTY COMMISSIONER OF POLICE

Appearance:
1. Special Criminal Application No. 348 of 2001
MR JB DASTOOR for Petitioner No. 1
MR HL JANI, Learned APP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. Heard Mr.J.B.Dastoor, learned advocate for the petitioner and Mr.H.L.Jani, learned APP for the respondents.

2. In the present petition, the show cause notice has been issued on 22/8/2000 under Section 59 of the Bombay Police Act, 1951 (hereinafter referred to as "the Act".) by the Dy. Police Commissioner, "C" Division, Surat City, which has been replied by the petitioner on 14/9/2000 and, thereafter, on 7/11/2000, the written submission has also be filed by the petitioner to the concerned Authority. Thereafter, the order of externment has been passed on 16/2/2001 and against that order the appeal has been preferred by the petitioner under Section 60 of the Act before the Appellate Authority and the Appellate Authority has modified the externment order by its order dated 26/4/2001. In the first externment order, the petitioner has been externed for a period of two years from Surat Rural, Surat City, Bharuch, Navsari and Valsad districts. That order has been modified to the effect that if the petitioner will give personal bond of Rs.25,000/-- within a period of 30 days from the date of appellate order of externment and also will give two sureties of the same amount, the externment order will be modified accordingly.

3. Mr.J.B.Dastoor, learned advocate appearing on behalf of the petitioner has fairly submitted that looking to the financial conditions and status of the present petitioner, he is not in a position to give a personal bond of Rs.25,000/- and also is not able to give two sureties of the same amount and, therefore, the petitioner has challenged the externment order, including the order of the Appellate Authority.

4. Therefore, Mr.Dastoor, learned advocate for the petitioner has requested to this Court to exercise the discretionary powers and reduce the amount of personal bond and also amount of sureties as the petitioner has difficulty to give personal bond and two sureties within the reasonable time.

5. Mr.H.L.Jani, learned APP appearing on behalf of the respondents has submitted that looking to the facts and circumstances of the case and considering the aspect that in the externment order, it has been stated that the reply submitted by the petitioner against the show cause notice on 14/9/2000 and written submission dated 7/11/2000 have been taken into account by the respondent Authority, without going into the merits of the matter, the Court may reduce the amount of personal bond as well as the amount of two sureties to some reasonable amount and the petitioner may be directed to give personal bond and two sureties of that amount which will meet in the

end of justice.

6. I have considered the submission of both the learned advocates and I have perused the order of externment which has been passed by the concerned Authority. Prima facie, it appears that the reply of the show cause notice has not been taken into account at all. According to my opinion, the order of externment, no specific reasons have been given why the reply submitted by the petitioner has not been taken into account and why the reply of the petitioner is not believed by the respondent -Authority. But without going into the merits of the matter, according to my opinion, looking to the offences which have been registered against the present petitioner, some leniency is necessary against the petitioner and, therefore, according to my opinion, the amount of personal bond and two sureties, if reduced to Rs.5,000/-, then it will meet the ends of justice. Accordingly, the order of Appellate Authority dated 26/7/2001 is modified to the effect that the petitioner is directed to give personal bond of Rs.5,000/- and also two sureties of the same amount within the period of 30 days from the date of receiving the true copy this said order. The petitioner is directed to execute the personal bond of Rs.5,000/- and two sureties of the same amount before the concerned Authority within the period of 30 days.

7. In view of the aforesaid observations and directions, the present petition is partly allowed. Rule is made absolute to that extent.

(H.K.RATHOD,J.)

(vrpanchal)**